

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TAVAUGHN M. CROSELL,	§	
	§	No. 409, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0907029372
Appellee.	§	

Submitted: September 15, 2011

Decided: November 22, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

**O R D E R**

This 22<sup>nd</sup> day of November 2011, upon consideration of the Clerk’s notice to show cause, the appellant’s response to the notice and the appellee’s answer, it appears to the Court that:

(1) On November 22, 2010, the appellant, Tavaughn M. Crosell, pled guilty, with the assistance of defense counsel (hereinafter “Counsel”), to Manslaughter, Robbery in the First Degree, and Possession of a Firearm During the Commission of a Felony. On July 1, 2011, the Superior Court sentenced Crosell to a total of thirty-five years at Level V suspended after twenty-five years for six months at Level IV and eighteen months at Level III.

(2) On August 8, 2011, Crosell, acting *pro se*, filed an untimely notice of appeal from the July 1, 2011 sentence. A timely notice of appeal should have been filed on or before August 1, 2011.<sup>1</sup>

(3) On August 17, 2011, the Clerk issued a notice directing that Crosell show cause why the appeal should not be dismissed as untimely filed. In response, Crosell contends that he relied upon Counsel to file a “motion for reconsideration of sentence,” which Counsel failed to do. Crosell maintains that he should not be penalized due to [Counsel’s] failure to communicate.” On September 15, 2011, at the direction of the Court, the appellee, State of Delaware, filed an answer to Crosell’s response.

(4) “Time is a jurisdictional requirement.”<sup>2</sup> In Delaware, the jurisdictional defect that is created by the untimely filing of a notice of appeal cannot be excused “in the absence of unusual circumstances which are not attributable to the appellant or the appellant’s attorney.”<sup>3</sup> An untimely appeal in Delaware cannot be considered unless an appellant can demonstrate that the failure to timely file a notice of appeal is attributable to court-related personnel.<sup>4</sup>

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<sup>1</sup> See Del. Supr. Ct. R. 6(a)(ii) (providing that a notice of appeal must be filed within thirty days after a sentence is imposed in a direct appeal of a criminal conviction).

<sup>2</sup> *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

<sup>3</sup> See *Honaker v. State*, 2006 WL 298165 (Del. Supr.) (quoting *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988)).

<sup>4</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

(5) In this case, Crosell does not contend, and the record does not reflect, that the untimeliness of this appeal is attributable to court-related personnel. The appeal, therefore, must be dismissed.

(6) Nonetheless, under the unique circumstances of this case, when Counsel had a continuing obligation to appeal if that was Crosell's desire, the State suggests and we agree that this matter should be remanded to the Superior Court to determine if Crosell consulted with Counsel and expressed a desire to appeal.<sup>5</sup> The Court further agrees that if the Superior Court determines that Crosell told Counsel that he wanted to appeal, the Superior Court should vacate its July 1, 2011 sentencing order and resentence Crosell, with the assistance of Counsel, so that a timely appeal might be filed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that this appeal is DISMISSED as untimely filed. This matter is REMANDED to the Superior Court for further proceedings in accordance with this Order. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>5</sup> See Del. Supr. Ct. R. 26(a) (providing for continuing obligation of and representation by counsel on appeal).